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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 24 2009

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. At the time she filed the petition, the petitioner was a doctoral student studying mechanical engineering and a part-time research assistant at the University of Hawaii at Manoa (UHM), Honolulu. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services (USCIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

On the Form I-140 petition, filed in May 2007, the petitioner stated her intention to "[w]ork on development of the smart composite platform for the satellite thruster vector control." This is a description of the petitioner's doctoral work at UHM which, at the time of filing, was a few months away from its expected August 2007 completion. The petitioner did not explain in what capacity she would continue this work after the imminent completion of her doctorate. All of the petitioner's previous documented work concerned automobiles or similar vehicles.

To discuss her work and its significance, the petitioner submitted several witness letters. UHM [redacted] who has supervised the petitioner's doctoral studies, described the project and the petitioner's role therein:

> For the past decade, one of the primary thrusts of my research has focused on intelligent/ smart composite materials and structures as well as their aerospace applications. . . .
>
> As one of the main tasks of space control technology, the satellite capability and alien attack protection took NASA a budget of $87 billion in the past 5 years, among which a large portion was used to improve the Thrust Vector Control (TVC) for satellites, space shuttles, and rockets. . . .
>
> [The petitioner] has worked on my ONR/NRL [Office of Naval Research/Naval Research Laboratory] sponsored project, Adaptive Damping and Positioning using Intelligent Composite Active Structures (ADPICAS), which aims at developing a smart platform using Intelligent and Composite Materials (ICM) to **improve satellite TVC**. Her contributions to this project and furthermore the national interests of the United States are described in the following:
>
> [The petitioner's] accomplishments in the ADPICAS project include: 1) modeling the Intelligent Composite Material (ICM) platform . . . ; 2) intelligent piezoelectric actuator placement optimization . . . ; and 3) simultaneous precision positioning and vibration suppression (SPPVS) of ICM panels for the smart platform. . . .
>
> These three achievements form the fundamentals of ADPICAS project for the development of smart composite panels and structures. . . . [T]he current bottlenecks of satellite technology are the imprecise positioning (also resulting in satellite structural vibrations) and the excessive onboard fuel consumption to perform TVC, which shortens the satellite life and restricts the functionality of the sensitive equipment aboard the spacecraft. [The petitioner's] research achievements propose solutions to two above-mentioned challenging problems in smart structures; namely, dynamic modeling and actuators optimizations. Later simulations and in-lab experiments showed that the vibrations caused by the thrust firing on the satellite can be suppressed down to 5% . . . and then the thrust vector of a satellite could be much more precisely placed with an accuracy of 0.0003 radians . . . and satellites possess a non-offensive and active defensive technique to avoid or minimize the risk of being attacked, a much longer life in space . . . , lower fatigue failure . . . and lower launch and utilization costs. . . . [T]his TVC technique is also vital to space shuttles, jets, missiles, and rockets to equip them with a better positioning accuracy and maneuverability, so that they can escape from enemy's attacks or precisely hit their targets. . . .
>
> [The petitioner] developed a methodology for satellites dish shape control using ICM. In this work, [the petitioner] introduced a theoretical solution for the 4th order governing

partial differential equation of the three-dimensional ICM satellite dish in spherical coordinate system. This is a major breakthrough comparing with the traditional simplified two-dimensional systems. She also demonstrated that an ADOB [Adaptive Disturbance Observer] control simulation based on this three-dimensional model shows a superior vibration suppression capability. This achievement enhances the satellite's signal receiving/ transmitting functionality significantly by keeping the satellite dish in its ideal shape. . . .

[The petitioner's] research work has been acknowledged by world renowned ICM experts. . . . I am confident that [the petitioner] has made outstanding contributions to scientific research.

[redacted], Associate Director of two laboratories at UHM, stated:

[The petitioner] has been a major contributor to [the ADPICAS] project. She creatively modeled the 3-struts smart composite platform system. . . . In addition, she proposed and implemented the artificial intelligence (Genetic Algorithm based) method in optimizing the piezoelectric sensor/actuator placement, including their numbers, size and configuration. . . .

With [the petitioner's] contribution the ADPICAS project has achieved significant progress and the smart composite platform has become a mature ready-to-use satellite technology.

[redacted] Deputy Division Director for Sea Platforms and Weapons at the Office of Naval Research, was "ONR's technical monitor on [the] grant" that funded the petitioner's work. [redacted] stated that the petitioner's "contribution constitutes a substantial advancement in the performance of satellites." [redacted] letter concludes with this disclaimer: "This letter should not be construed as a statement by the undersigned . . . for or against any U.S. immigration benefit or change in status that [the petitioner] may be seeking." It is difficult to construe this letter, which [redacted] addressed to "U.S. CIS/Nebraska Service Center" and in which [redacted] referred to the petitioner as "a national asset to our country," as being neutral or unrelated to the petitioner's efforts to obtain immigration benefits.

Researchers from North Carolina State University, Pennsylvania State University, the National Aeronautics and Space Administration (NASA) and the National Research Council, Canada, credited the petitioner with innovative contributions to her field; their descriptions of the petitioner's work and its importance are broadly similar to the descriptions quoted above. These comments all concern work that the petitioner performed not independently, but rather in conjunction with her doctoral research which was nearly completed when she filed the petition.

The petitioner submitted copies of her published articles, but no documentation of the extent, if any, to which other researchers have cited the petitioner's published work.

The director issued a request for evidence on March 21, 2008, instructing the petitioner to "submit any available documentary evidence" of the petitioner's impact on her field, including "copies of additional published articles that cite or otherwise recognize" the petitioner's prior publications. The director also instructed the petitioner to "indicate where you intend to be employed and in what capacity/job position."

In response, the petitioner demonstrated that she received her doctoral degree in December 2007. Counsel stated: "Potentially depriving the employer of her skills will have an adverse impact on [the petitioner's] area of research," but counsel failed to identify "the employer." Addressing the director's request for information about the petitioner's intended employment, counsel stated that the petitioner "will continue her research endeavors to the benefit of the U.S. . . . [The petitioner] will seek a research/development position at a U.S. university, non-profit research institute and/or in industry in astronautic and aeronautic engineering."

The petitioner submitted copies of several published pieces identified as containing citations to the petitioner's work. Almost all of the citations are self-citations by the petitioner or by [redacted] One published piece, "Guide to the Literature of Piezoelectricity and Pyroelectricity," appears to be a comprehensive bibliographic catalog rather than an "article" as such, and inclusion in such a guide is not a "citation" in the sense contemplated by the director. The petitioner's submission included only one article in which independent researchers cited the petitioner's work while reporting their own original findings.

Four new witness letters accompanied the petitioner's response to the director's notice. [redacted] described the work that the petitioner performed between when she filed the petition and when she received her doctoral degree. [redacted] credited the petitioner with making the project "a major success," but said nothing of the petitioner's activities after the completion of her studies.

[redacted] of the U.S. Naval Research Laboratory, who met the petitioner during site visits to check on the progress of the ADPICAS project, stated that the petitioner's "research has had a significant impact both on her field and on the research of other scientists. . . . The technology and data produced from [the petitioner's] research work have been widely cited and adopted by other scientists in their research." The assertion that the petitioner's work is "widely cited" is not consistent with the citation materials submitted by the petitioner, which indicate that nearly every citation of the petitioner's work is a self-citation. If other independent citations of the petitioner's work exist, the petitioner has chosen to omit them from the record.

University of Houston Professor [redacted] praised the petitioner's "long record of academic excellence" and is "irreplaceable in the projects [in which] she is involved." [redacted] did not identify any projects in which the petitioner has been involved since completing her graduate studies.

The final witness, [redacted] of the National Oceanic and Atmospheric Administration (NOAA) Center for Tsunami Research, is the only witness even to hint at the petitioner's post-doctoral activities. [redacted] stated:

> This letter is to verify my academic cooperation with [the petitioner] starting from the end of 2007. . . .
>
> I have been working . . . to develop and implement NOAA's experimental tsunami forecast system to enhance tsunami forecast warning capabilities along the U.S. coastlines. The system requires recent advance in deep-ocean tsunami detection by bottom pressure recorders and numerical modeling technologies. While doing literature survey, I came across [the petitioner's] sensor distribution optimization method on the space structure which was presented in her [2003] paper. . . . I was very impressed by this paper. I contacted her by expressing my interest in this work, and asked her to give me a very detailed description of her optimization method.
>
> Following the initial contact, we had a series of reciprocal communications. . . . [The petitioner's] work could potentially help the future tsunami warning. . . . I firmly believe that [the petitioner's] research finding has opened the door for a series of significant scientific discoveries, and I expect her to continue to make highly influential contributions on this topic in the near future.

There is no indication that the petitioner continues to work with satellite technology, which was a central aspect of the initial waiver claim.

The director denied the petition on August 18, 2008, stating that the minimal independent citation of the petitioner's work does not establish that the petitioner's work has significantly affected the work of others in her field. The director found that the witness letters, while complimentary, are rather general and fail to demonstrate that the petitioner has been especially influential in her field.

On appeal, counsel argues that the petitioner "has distinguished herself as an expert whose skills cannot be articulated in the labor certification process and that are of great importance to aeronautics and astronautics, which are critical issues for NASA and the Department of Defense and national security as well as the economy." As noted above, the record is devoid of evidence that the petitioner's work relating to aeronautics and astronautics continued after she completed her doctoral degree in 2007. The only witness to comment on the petitioner's post-doctoral activities works with sensor equipment beneath the ocean rather than orbiting the earth on satellites.

Counsel claims that the letters submitted in support of the petition are from "pioneers" and "world-renowned experts in [the petitioner's] field." This assertion is unsupported. The unsupported assertions of counsel do not constitute evidence. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Even if this were not the case, the letters establish little except that the petitioner possesses valuable training in an important field, an assertion that is not sufficient to demonstrate eligibility for the waiver. *See Matter of New York State Dept. of Transportation* at 221. At least one witness made a factually questionable claim that the petitioner's work is "widely cited."

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 582, 591-92.

Regarding the petitioner's citation record, counsel states:

> The CIS downplays the number of [the petitioner's] citations, and indicates she has only one citation that is not a self-cite. [The petitioner] asserts that the CIS erred and that she has been cited several times, including in the book *Progress in Smart Materials and Structures* . . . which represents the latest progress of smart materials.

The citation of the petitioner's work in *Progress in Smart Materials and Structures* appears in a chapter co-authored by [redacted], who was also a co-author of the petitioner's cited work. This is, by definition, a self-citation by [redacted]. Self-citation is common and accepted practice in academia, but it is not an indication of wider acceptance and implementation of the self-cited work.

The record is devoid of evidence that the petitioner was involved with satellite technology either before or after her doctoral studies at UHM. When specifically asked for evidence of her post-doctoral activities, the petitioner was able only to show that she had corresponded with an oceanic researcher. The apparent lack of demand for the petitioner's continued services in the field of aeronautic engineering has not escaped the AAO's attention when weighing the witness statements against the objective evidence of record.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.